

EHARDT SMITH & TORGESEN Marty R. Anderson, ISBN 5962 1000 Riverwalk Drive, Suite 175 Idaho Falls, Idaho 83402 Attorneys for the Defendants Tel. (208) 542-9292 Fax (208) 552-2518

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF IDAHO

HOLM CONSTRUCTION, LLC, an Idaho Limited Liability Company, in the name of THE UNITED STATES OF AMERICA,

Plaintiff.

VS.

DESERT SAGE CONTRACTORS, INC., an Idaho Corporation, and DEVELOPERS SURETY AND INDEMNITY COMPANY, Surety,

Defendants.

STATE OF IDAHO) ss.
County of Bonneville)

Case No. CV-03-273-E-LMB

AFFIDAVIT OF RANCE BARE

AFFIDAVIT OF RANCE BARE - 1

B

RANCE BARE, being first duly sworn, deposes and says as follows:

- 1. I am the President of Descrt Sage Contractors, Inc., ("Desert Sage"), a named defendant in the above-captioned matter, and I have personal knowledge of the facts set forth herein.
- 2. In the spring of 2002, Desert Sage sought to obtain the contract for certain trail improvements to be performed under the direction of the Bureau of Land Management on the Cress Trail near Heise Hot Springs. Desert Sage sought and secured various proposals for subcontract work (including construction of concrete sidewalks and other concrete items) on the Cress Trail Project prior to bidding the job on or about April 2, 2002.
- 3. One of the parties that responded to our solicitation of bids was Holm Construction, LLC ("Holm"). Their original proposal was for providing forms, labor and materials in the amount of \$57,480 and/or providing forms and labor with Desert Sage Contractors furnishing the materials in the amount of \$37,500.
- 4. The price for the Holm bid seemed to be disproportionately low. I contacted Mr. Jason Holm and discussed his proposal. He acknowledged that he had not looked at the project and was unaware of the difficult access to the upper reach (Schedule B) of the work area. Mr. Holm stated he would make a site visit and reconfirm his proposal(s). Revised proposals in the amount of \$99,152.50 were submitted related to work on Schedule A and B or \$68,400 for work related to Schedule B only. A true and

correct copy of the bid is marked Exhibit "A", attached hereto and incorporated by this reference.

- 5. Desert Sage proceeded to bid the project without a commitment to any concrete sub-contractor. Subsequent to the award of the contract Desert Sage Contractors met with Holm Construction and reviewed their proposal for labor and forms only with two modifications: we did not accept their prices for 2 cubic yards of median barriers and 18 cubic yards of retaining walls. Both of these items were specified to be pre-cast and brought to the site.
- 6. A contract was then issued to Holm Construction in the amount of \$55,050. Said contract was issued on a unit price basis consistent with Desert Sage Contractors contract, i.e. sidewalk by the square yard, curbing by the linear foot, structural concrete by the cubic yard. A true and correct copy of the bid is marked Exhibit "B", attached hereto and incorporated by this reference.
- 7. Said contract required Desert Sage Contractors to construct the sidewalk sub-grade and to furnish the concrete at the site for handling by Holm Construction. Holm accepted the contract and agreed to commence work in accordance therewith.
- 8. Shortly after beginning work Desert Sage Contractors noted that there was some difficulty with Holm crews arriving at the job site as scheduled. Desert Sage Contractors met with Holm and discussed the situation and the need to adequately

meet the job schedule. Within a week to 10 days, Holm crews were again ignoring 9. scheduling commitments and as a result the project was falling behind schedule. Additionally we had received some verbal complaints from two (2) 10. female laborers that were on the Desert Sage crew regarding inappropriate comments by some Holm personnel. We again met on site with Holm, discussed the situation and 11. schedule with them. They assured us they would correct the problem. However, the problems persisted and Holm's workers continued to ignore the work schedule. In the interim, Holm submitted an estimate of work completed in the 12. amount of \$32,323 on approximately 58% of their work value. Actual completion was approximately 1/3 of the project. Based on their repeated breaches of the schedule and an obvious 13. misrepresentation of work completed, Desert Sage decided to terminate Holm and complete the work with their own crews. I informed the contract officer of the termination of the contract on August 22, 2002. A true and correct copy of the letter to

- the BLM is attached hereto, marked Exhibit "C", and incorporated by this reference.
- We reviewed the contract with Holm and attempted to pay them in 14. accordance with work actually performed as of the day they left the job on August 14, 2002.

- 15. No work was attempted by Holm on the Schedule A bid.
- 16. On the Schedule B bid, Holm actually performed some or all of the contracted work on Item B-8, Concrete Modular Retaining Walls, Item B-11, Concrete Sidewalks and Item B-14, Structural Concrete (Bridge Concrete, Footings, Stairs, etc.).
- 17. With regard to Item B-8, Desert Sage acknowledges 100% completion of the Modular Retaining Walls and paid Holm the bid amount of \$1,900.00.
- 18. With regard to Item B-11, Schedule B sidewalk was designated by the specifications of the bid and did indeed include the upper area of the job. As noted above, Holm's bid was subject to notice that the Schedule B portion had terrain considerations, and, in fact, these were specifically discussed with Jason Holm. Desert Sage was required to complete the length of Schedule B sidewalk unfinished by Holm, as well as the Schedule A sidewalk bid but not attempted by Holm.
- 19. According to the contract, the total of Schedule B sidewalk was 1158 square yards. Holm completed 404.2 square yards of Schedule B sidewalk, or 34.9%. Holm's bid total is \$32,500.00. 34.9% of that is \$11,344.13. Descrt Sage paid Holm \$11,343.24 for Schedule B sidewalk completed.
- 20. Regarding the structural concrete for Schedule B-14, again, Holm Construction completed far less than their bid called for. Of the 17.6 cubic yards of structural concrete, Holm actually installed 7.23 cubic yards, or 41%. Schedule B-14 was bid at \$8,550.00. Holm was owed \$3,512.30. Desert Sage paid Holm \$3,516.84. In

addition to that, Desert Sage paid Holm a \$1,676.00 premium for the uphill work.

- 21. The total earned by Holm for their completed portion of the bid (including the premium of 10% for the uphill work) was \$18,432.43 for all Schedule B work completed.
- 22. Desert Sage paid Holm \$20,000.00 by Check No. 21121 on or about August 14, 2002. A true and correct copy of the check is attached hereto, marked Exhibit "D", and incorporated by this reference.
- 23. At the time the check was tendered to Holm, Desert Sage required a Lien Release to be signed. The Lien release was executed on behalf of Holm by Jason Holm on August 14, 2002. A true and correct copy of the Lien Release is attached hereto, marked Exhibit "E", and incorporated by this reference.
- 24. There were some materials purchased by Desert Sage and other credits against the bid. Desert Sage was to be credited for a purchase of linsced oil (\$600.00), for pouring some concrete footings (\$481.32), and for a return of concrete sent back (\$210.68). These adjustments to the contract would produce a net amount due to Holm from Desert Sage of \$17,141.11. Therefore, Holm has actually received an unearned windfall of \$2,858.89.
- 25. That Holm considers the degree of labor involved in the area completed to be disproportionate to the uncompleted area is irrelevant. The contract was clearly for sections of the job completed, not percentage of total bid amount expended. If

it were so, the result would be that Holm expected to be paid an unrealistic exorbitant \$64.33 per square yard for the job portion completed and a cut-rate of \$21.89 per square yard for the portion of the job left undone. If Holm felt its average cost was too heavily consumed by the upper portion of the Schedule B sidewalk, Holm should not have bid the contract the way it was presented.

- 26. Additionally, I find it hard to believe that Holm delivered concrete by hand in wheelbarrows. I can document the delivery of concrete using a specific track device to deliver the concrete through invoiced charges incurred by Desert Sage for the concrete delivery.
- 27. The forms on the Schedule B portion of the contract were reset because the Holm crews did not allow the required 18" offset from the stakes placed to mark form and rail placement for the concrete work. The offset requirement was clearly marked on the stakes, and Holm's failure to follow that instruction is their responsibility.
- 28. Due to our fundamental disagreement regarding the contract and the nature of the work involved, Holm and Desert Sage reached an impasse on trying to further resolve the matter. Quite simply, Desert Sage was unwilling to pay any additional funds beyond the \$20,000 for which we had received the Lien Release and waiver.
- 29. Unwilling to let the matter drop, Holm apparently retained attorney Stephen Blaser of the law firm Blaser, Sorenson & Hansen, Chartered. I initially received a demand letter from Mr. Blaser in September 2002. A true and correct copy of the

demand letter dated September 24, 2002 is attached hereto, marked Exhibit "F", and incorporated by this reference. The demand letter sets forth a claim for \$14,531.00.

- 30. Desert Sage declined further payment pursuant to the demand letter based on our prior discussions with Holm.
- 31. Desert Sage received a subsequent demand letter from Mr. Blaser on March 7, 2003 together with copies of letters sent to the BLM and Developers. This subsequent demand letter sought to increase the amount claimed to \$22,540.00. True and correct copies of the demand letters dated March 7, 2003 are attached hereto, marked Exhibit "G", and incorporated by this reference.
- 32. Desert Sage responded to Mr. Blaser's March 2003 claims by again denying liability for any such claim and further referring the matter to its attorney, Kimball Mason. A true and correct copy of the letter dated March 12, 2003 is attached hereto, marked Exhibit "H", and incorporated by this reference.
- 33. Mr. Mason enlisted the service of attorney John L. Stosich to represent our interests as well as the interests of the surety, Developers, in this matter.
- 34. Through Mr. Stosich, Desert Sage again documented its position with respect to Holm and the Cress Trail Project, i.e., that Holm had been more than fairly compensated for the work performed pursuant to the terms of the contract and the project specifications.
 - 35. Desert Sage again believed that the matter had been resolved based

upon the information it provided.

- 36. On October 7, 2003, Desert Sage received a letter from Mr. Blaser together with two documents: 1) a copy of a Notice of Lawsuit and Request for Waiver of Service of Summons; and, 2) two copies of a Waiver of Service of Summons. No Complaint was provided to us on October 7, 2003. A true and correct copy of the letter dated October 2, 2003 together with all of the enclosures (except the self-addressed stamped envelope) is attached hereto, marked Exhibit "I", and incorporated by this reference.
- 37. Desert Sage forwarded these documents to Mr. Mason and Mr. Stosich via facsimile on October 7, 2003.
- 38. To the best of my recollection, I may have been contacted shortly thereafter regarding a conference that was scheduled but was supposed to be rescheduled.
- 39. During the latter part of October or early November 2003, I had an office conference at Desert Sage with myself, Edna Larsen, Kimball Mason and John Stosich regarding this case. We discussed various means to resolve the case including mediation, additional settlement offers, etc.
- 40. I had an additional office conference with Mr. Stosich during which we discussed mediation as a means to resolve this matter. I authorized Mr. Stosich to set up the mediation.
 - 41. I believed that the matter was being handled by our attorneys to

arrange for the mediation. I am not familiar with litigation and had no idea what that entailed or the timeline when mediation might occur.

- 42. My next involvement in this case was when Desert Sage received a letter from Mr. White, an agent of Developers, indicating that Mr. Blaser had secured a Default Judgment against us. A true and correct copy of the letter dated July 14, 2004 is attached hereto, marked Exhibit "J", and incorporated by this reference.
- 43. I could not see how this was possible. We had hired attorneys to represent our interests and those of Developers in the litigation. A true and correct copy of the check written by Desert Sage for fees plus a "filing fee" is attached hereto, marked Exhibit "K", and incorporated by this reference.
- 44. I immediately contacted Mr. Mason and learned that Mr. Stosich had subsequently joined the Idaho Attorney General's office. Mr. Mason helped us arrange our current counsel. I am prepared to proceed with the litigation in an expeditious manner.
- 45. The amount of damages claimed by Holm is far in excess of those called for under the contract, which again we believe have been paid.
- 46. There is no way that Mr. Blaser could have incurred \$10,000 in attorney fees and costs in pursuing this litigation in light of the amount that Desert Sage expended.

Further your Affiant sayeth naught.

DATED this **Z** day of August, 2004.

STATE OF IDAHO

) ss

County of Bonneville

Subscribed and sworn before me this 12 day of August, 2004.

 \mathbf{S} \mathbf{E} A

Residing at Idaho Falls
My Commission Expires: 8/16/08

CERTIFICATE OF SERVICE BY MAIL, HAND DELIVERY OR FACSIMILE TRANSMISSION

I hereby certify that a true and correct copy of the foregoing document was on this date served upon the persons named below, at the addresses set out below their name, either by mailing, hand delivery, or by telecopying to them a true and correct copy of said document in a properly addressed envelope in the United States mail, postage prepaid; by hand delivery to them; or by facsimile transmission.

DATED this May of August, 2004.

Marty R. Anderson

Stephen J. Blaser, Esq. Blaser, Sorensen & Hanson, Chartered 285 N.W. Main P.O. Box 1047 Blackfoot, ID 83221 [X] Mail
[| Hand Delivery
[| Facsimile

Exhibit A



HOLM CONSTRUCTION LLC

1995 N. INKOM RD. INKOM, ID. 83245

Phone:208-775-1912 Fax: 208-775-4784 Emil: HOLM1969@AOL.COM

Fax Transmittal Form

To: DESERT SAGE

From: HOLM CONSTRUCTION LLC

Name: RANCE

Traci Holm

Phone number: 1-209-552-1144 Fax rumber: 1-208-552-9830 Phone:208-775-1912 Fac: 208-775-4784

Email: HOLM! 969@AOL.COM

□ Urgent ☐ For Review Date sent: 03-22-02 Three sent: 12:45 PM

☐ Please Comment

Number of pages including cover pages 2

Please Reply

Message: RANCE, HERE ARE THE SCHEDULE A & B FORMS FOR THE CRESS CREEK PROJECT. RANCE I THOUGHT THIS MIGHT MAKE IT EASIER TO PUT ON YOUR BID SHEET,

> THANK YOU TRACI HOLM OFFICE MANAGER

IASON HOLM OWNER

RYAN HOLM OWNER

03/22/2002 15:12

FAX NO. : 12087754784

SE/Z CONST

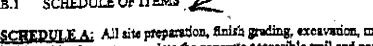
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	Cress Creek Parking and Touli	[· -e** 7]

SECTION B — SUPPLIES OR SERVICES AND PRICES

SCHEDULE OF ITEMS _



SCHEDULE A: All site preparation, finish grading, excavation, materials, concrete, labor, backfilling and incidental hardware to complete the concrete accessible trail and parking lot from sta. 0+00 to sta. 3+00, including Culvert at south end of new parking lot, geotestile, concrete curbing and curbing fence, concrete median barriers, excavation, aggregate, pedestrian gate, signs and misc. items. Prices shall be included in the prices bid for each Pay Item under Schedule A, see Site Plan Sheet no. 5.

Item No.	Pay Item No.	Description	<u>Duantity</u>	Unit	Unit Price	Total Amount
1.	01505(01)	Mobilization	1	LS	s	S
2.	01458(01)	Testing Laboratory Services	1	L\$	s	\$ <u></u>
_ 3. ^{/s}	02231(01)	Clearing and Grabbing	0.6	Ac	\$	s
4 .	02245(01)	Geotectiles	1516	\$q Yd	<u> </u>	\$
5.	02315(21)	Excavation and Fill (Erosion Repair)	1030	Cu Yd	\$	3
6.	02322(02)	Excavation and Fill for Structures (Common E		Cu Yđ	S	\$
7.	02339(01)	Wetering	40.4	1000 Gal	S	S
8.	02640(02)	Culverts (18" x 34" Ge Steel Spiral-At New Parking Area)	lv. 34	In Ft	\$	\$
9.	02722(02)	Crushed Aggregate Base Course	358.4	Ton	5	\$
10.	02776(02)	Concrete Sidewalks	206	Sq Yd	s 42.50	s_ <i>8,755</i>
11.	02\$21(02)	Chain Link Fences & Ge (5'High Chain Link Fence		Lo Ft	\$	\$
3 12.	02821(03)	Chain Link Fonces & Go (Rock Fall Fonce)	utes 1	LS	\$	5

FROM : HOLM CONSTRUCTION

03/22/2002 15:12

FAX NO. : 12097754784

Mar. 24 2002 01:30PM P3

PAGE BB

Page Socument 77tle Document No. Cross Creek Parking and Trail NDB020005

SE/2 CONST

hum No.	Pay Item No.	Description	Quantity	Unit	Unit Price	Total Amount
13.	3310(02)	Structural Concrete (Footings, Curbing, Post bases, etc.)	10.5	Cu ¥đ	s_660	s 6,930
14.	03310(03)	Structural Concrete (Median Barriers)	230	Ln #	s <u>8</u>	\$ 1840
15.	03310(04)	Structural Concrete (Parking Lot Counterfort Retaining Wall, Sta. 1+00 to Sta. 2 +80)	180	Ln Ft	s <u>63</u>	s 11340
16.	03310(05)	Structural Concrete (Retaining Wall & Footing- Sta. 3 + 92 to Sta. 4 + 17)	25	Ln Ft	s <u>75.50</u>	s <u>1,887</u>
17.	05511(02)	Metal Stairs and Handrails (Steel Post & Rail Fence)	200	Ln Ft	\$	s
18.	. 05511(03)	Metal Stairs and Handrails (Pedestrian Gate-Sta. 0 + 9:	1	Each	\$	\$

TOTAL SCHEDULE A: S 30,752.50

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SE/Z CONST

Mar. 24 2002 01:31PM P4

PAGE 04

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ı	Document No.	Dogument Title	Page g
		Cross Crook Parking and Trail	

SCHEDULE B: All site preparetions, finish grading, excavation, materials, concrete, labor, backfilling and incidental hardware to complete the accessible concrets sidewalk from station 3+00 to 19+42, gravel trail from Sta. 19+42 to Sta. 19+68, access road from Sta. 44+75 to Sta. 51+43, concrete rest stop and over look slabs, post and pole railings, concrete stairs, Benches, tables, vehicle gate, banches, tables, sign mounts/posts and signs, culvert and headwalls, shall be included in the prices bid for each Pay Item under Schedule B.

Item No.	Psy Item No.	Desgription	Ovantity	<u>Unit</u>	Unit Price	Total Amount
1.	01458(01)	Testing Laboratory Services	1	LS	\$	\$
2.	01505(01)	Mobilization	1	LS	\$	S
3.	02322(02)	Excevation and Fill for Structures (Common Exc.)	1676	Cu Yd	3	\$
4.	02223(01)	Site Demolition (Existing foot bridge- Stz51+31)	1	LS	\$	S
5.	02231(01)	Clearing and Grubbing	1.61	Ac	\$	\$
6.	02339(01)	Watering	20.0	1000 Gal	\$	S
7.	02246(01)	Geotextiles	3047	Sq Yd	s	5
8.	02276(01)	Concrete Modular Retaining Wall (Culvert Headwalls- Sta. 51+31)	ş 1	LS	s <u> 2,540</u>	5_2,520
9.	02640(02)	Culverts (36" x 22" Galv Stoci Spiral Arch-14 Ga Sta. 51+31)	14	Lo Fi	s	S
10.	02722(02)	Creshed Aggregate Base Course	639	Ton	S	. \$
11.	02776(02)	Concrete Sidewalks	1158	Sq Yd	s 46	s <u> 57268</u>
12.	02874(30)	Campground Tables (Assemble & Place Tables)	3	Zach	\$	\$

FAX NO. : 12087754784 SE/Z CONST

Mar. 24 2002 01:31PM P5 PAGE 35

		NDB020005	Pocument 1996 Cress Creek Parici	g and Trail		Page 10
Item No.	Pay Item No.	Description	Quantity	Unit	Unit Price	Total Amount
13.	02874(31)	Campground Tables (Assemble & Place Bend	10 hes)	Each	S	\$
14.,	03310(02)	Squetural Concrete (Bridge Conc., Footings, Stairs, etc.)	17.6	Cu Yd	s. <u>6.45</u>	s 11,352
15.	03310(04)	Structural Concrete (Counterfort Retaining Wall-Sta. 14+95)	. 16	Ln Ft	s 78.25	s 1260
16,	05511(02)	Metal Stairs and Handraii (Steel Post & Raii Fence)		Ln Fe	Ś	\$
17.	5511(04)	Metal Stairs and Handrail (Traffic Control Gate-14:		LS	\$	5
18.	06311(01)	Preservative-Treated Lum (Trex, wood, Fasteners)	ber l	LS	s _	5
			TOTAL	sc he duli	в: \$ <u>68,</u>	<u>4∞.∞</u>

Bond Requirements: In accordance with FAR 52.225-01, the bond requirements for bids in excess of \$100,000 are: 20% Bid Bond; 100% Payment Bond; and 100% Performance Bond.

TOTAL SCHEDULE A+B: \$

Payment Protection Requirements: In accordance with Public Law 103-355 (FASA), for awarded communic between \$25,000 and \$100,000 a 50% Payment Protection in the form of either 1) a Payment Bond, or 2) an Interocable Letter of Credit, will be required within 15 calendar days after receipt of notification of award.

Period of Performance: Schedule A -120 calendar days Schadule B - 90 calendar days Total 210 calendar days 210 colondar days

Estimated Price Range of this project is between \$250,000.00 and \$300,000.00.



Exhibit B

HOLM CONSTRUCTION LLC 1995 N INKOM RD. INKOM, ID. 83201 208-243-4656 OR 208-775-1912 FAX# 208-775-4784

Estimate

DATE	ESTIMATE #
4/19/02	201

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BILLTO		7
DESERT SAGE 208-522-1144 FAX# 208-652-9830 ATTN:, RANCE		

, ITEM	The state of the s	AMOUNT
	CRESS CREEK TRAIL	o.o.
SCHEDULE A-10	SIDEWALK	5,175,00
SCHEDULE A-13	CURB	5,500.00
SCHEDULE 1-16	STRUCTUAL CONCRETE	1,425.00
SCHEDULE 3-8	CULVERT HEAD WALLS	1,900.00
SCHEDULE 3-11	SIDEWALK	32,500.00
SCHEDULE 3-14	STRUCTUAL CONCRETE	8,550,00
	BID INCLUDES LABOR, FORMS, CURE, AND LINN SEED OIL	0.00
I FARE CONTA	T JASON HOLM @ 243-4850 IF YOU HAVE ANY	

FROM: Desent Sage Contractor: FROM: HOLM CONSTRUCTION

PHONE NO. : 208 552 9830 FAX NO. : 12087754784

Aug. 12 2004 02:20PM P3

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MER 7646-Dr 161-4267	 -		<u> </u>	CONTRACTOR AND

Exhibit C



445 N. Capital, Suite 5C • Idaho Falls, ID 83402 Phone: (208) 552-1144 • Fax: (208) 552-9830

Contractors, inc.

August 22, 2002

BLM National Business Center Ms. Denise Bickler, Contract Officer BC 670B, Box 50, DFC P.O. Box 25047 Denver, CO 80225-0047

Re:

Cress Creek Trail

NDB 0020005

Dear Ms. Bickler,

This is to inform you that as of August 12, 2002 we have terminated our subcontract with Holm Construction for concrete work on the subject project. Said termination was occasioned by Holm's failure to maintain our construction schedule. Quality was not one of the considerations for terminating the subcontract.

Please be advised that Desert Sage Contractors will hire adequate trained personnel to complete the concrete work.

If you have any questions, please do not hesitate to call.

Yours truly,

DESERT SAGE CONTRACTORS, INC.

Rance Bare by ML

RB:ml

Cc: Richard Hoffman

Exhibit D

DESERT SAGE CONTRACTORS, INC.

DATE	INVOICE NO.	DESCRI	PTION	INVOICE AMOUNT	DEDUCTION	BALANCE
8-14-02	1	Cress Trai	1 Subcont	20000.00	.00	20000.00
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				;		
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CHECK }	8-14-02 NG	ECK: 21121	TOTALS	20000.00	.00	20000.00

Desert	
Sage	
Contractors, Inc.	

445 N. CAPITAL SUITE 5C IDAHO FALLS, ID 83402 PH. (208) 552-1144

BANK OF IDAHO

/ <u>92-36</u> 1241 21121

Dave ###

DATE

CHECK NO.

AMOUNT

August 14, 2002

21121 S*****20.000

PAY TO THE ORDER Holm Construction, LLC 1995 N Inkom Road Inkom, ID 83245

Um J. fame Sane

#O21121# #124103676# 1 1724093#

Exhibit E

LIEN RELEASE

FROM:

Holm Construction

PROJECT: Cress Trail Reconstruction

TO: Desert Sage Contractors, Inc.

CONTRACT NO: NDB00200005

CONDITIONAL RELEASE

WORK PERFORMED

The undersigned does hereby release all mechanic's liens, stop notice, equitable lien and labor and material bond rights against the above described labor services, etc..., purchased acquired or furnished by or for us and used on above premises up to and including 8/14/02. This release is for the benefit of, and may be relied upon by the owner, the prime contractor, the construction lender, and the principal and surety on any labor and material bond.

This release is CONDITIONAL, and shall be effective only upon payment to the undersigned in the sum of \$20,000

If the payment is by check, this release is effective only when the check is paid by the bank upon which it is drawn.

FIRM NAME: HOLM CONSTRUCTION, LLC

DATE! 8-14-02

NOTARY

STATE OF IDAHO

SS,

COUNTY OF BONNEVILLE

a Notary Public in and for said State, personally appeared

forgoing Release, and acknowledged to me that (he/she) executed the same.

IN WITNESS WHEREOF, I have hereunto placed my official hand and seal the day and year in this Certificate first above written.

Notary Public of Idaho Residing at Idaho Falls, ID

Commission Expires: ___

3-26-2005



Exhibit F

BLASER, SORENSEN & HANSEN, Chartered

Attorne at Law (208) 185-4700 FAX NOW85-7080

Stephen J. Blaser Murray Jim Sorensen Scott H. Hansen

September 24, 2002

285 N.W. Main MAILING ADDRESS: P.O. Box 1047 Blackfoot, Idaho 83221

Rance Bare DESERT SAGE CONTRACTORS, INC. 445 North Capital, Suite 5C Idaho Falls, ID 83402

Re:

Holm Construction

Dear Mr. Bare:

I have been contacted by Holm Construct, L.L.C. concerning a contract which you had with them as a subcontractor on the Cress Trail Project.

They submitted a subcontract bid, which you used for obtaining the contract work from the Government of \$67,800.00. You had made certain promises to them that they would drop the bid from the original bid price after you had already been awarded the contract.

Subsequently, you also made further promises to them, because of errors with your foreman, Dennis, and the complications and problems he was causing for the project itself, that if they would leave the project, you would agree to pay them the full amount of \$34,531.00, of which you paid \$20,000.00 and have now refused to pay anything further.

This is a federal contract and likely governed under the Miller Act, and we have every intention on pursuing our lien claims against the Government project and upon your performance and payment bond.

There are a lot of issues that could be brought up for further damage claim, however, you had agreed to pay them if they agreed to leave the project \$34,533.00, leaving a balance after the \$20,000.00 down of \$14,531.00.

Please submit that amount to my office by September 30th. There will be a mutual release and everyone can go home. If not, we will proceed against your payment and performance bond for the full amount of the contract price, less what has been received, since you were the party that breached the contract with them.

THEREFORE GOVERN YOURSELF ACCORDINGLY.

Yours very touly,

BLASER, SORENSEN & HANSEN, Chrt.

Stephen J.

Attorney at Law

SJB/lm!

cc: Holm Construction

CERTIFIED MAIL, RETURN RECEIPT REQUESTED

Exhibit G

BLASER, SORENSEN & HANSEN, Chartered

Attorneys at Law (208) 785-4700 FAX No. 785-7080

Stephen J. Blaser Murray Jim Sorensen Scott H. Hansen

285 N.W. Main MAILING ADDRESS: P.O. Box 1047 Blackfoot, Idaho 83221

March 7, 2003

Desert Sage Contractors, Inc. Attn: Rance Bare 445 North Capital, Suite 5C Idaho Falls, ID 83402

RE: Holm Construction

Dear Mr. Bare:

You have been in contact with our client Holm Construction and told them to lay off on pursuing any claim under the bond in this matter. You were sent a demand letter on February 24, 2002 requesting payment. You have failed to come up with any resolution to this matter. Therefore, we have been forced to proceed in collection.

Be advised that if you wish to resolve this matter short of litigation please contact me. Otherwise we will continue to proceed under the Miller Act against your bond.

We are now demanding payment of \$22,540.00. That is the amount of labor and materials expended on the project that has not been paid.

Thank you.

Yours very truly,

BLASER, SORENSEN & HANSEN, Chrt.

Attorney at Law

SJB/rlr enclosure

cc: Holm Construction

Exhibit H



45 N. Capital, Suite 5C • Idaho Falls, ID 83402 Phone: (208) 552-1144 • Fax: (208) 552-9830

Contractors, Inc.

March 12, 2003

Blaser, Sorensen and Hansen, Chtd. Mr. Stephen J. Blaser P.O. Box 1047 Blackfoot, Idaho 83221

Re:

Holm Construction, Cress Trail

Dear Mr. Blaser,

We are in receipt of your letter of March 7, 2003 regarding the subject.

Please be advised that we have been in contact with your client; Holm Construction, in order to advise them that we were still in the process of trying to settle claims with the BLM on the subject project, some of which involved their work and further until said claims were resolved we were not in any position to close the project with them.

We inquired as to why your office had been in contact with the BLM in Denver and were told that he had no knowledge of your actions. We did discuss with him the fact that we felt the issue could be settled once the claims were finalized.

With regards to the statement in your letter to Developers Surety regarding Desert Sage agreeing to a payment of \$34,531 at the time of Holm's dismissal, please be advised that at no time did we agree to that amount being the amount either carned or owed. In fact, the \$20,000 paid to them is in excess of the amount which they had earned on the project; excluding the amount which we have submitted to claim in their behalf.

In as much as the decision has been made to escalate this matter we would request that all future communication on this matter be addressed to our attorney, Mr. Kimball Mason, P.O. Box 50561, Idaho Falls, Idaho 83405.

Thank you very much,

Yours truly,

DESERT SAGE CONTRACTORS, INC.

RB:ml Cc:

BLM Denver

Developers Surety Holm Construction Kimball Mason

Bill Post

Exhibit I

BLASER, SORENSEN & HANSEN, Chartered

Attorneys at Law (208) 785-4700 FAX No. 785-7080

Stephen J. Blaser Murray Jim Sorensen Scott H. Hansen Justin B. Oleson

285 N.W. Main MAILING ADDRESS: P.O. Box 1047 Blackfoot, Idaho 83221

October 2, 2003

Desert Sage Contractors, Inc. Rance Bare 445 N. Capital, Suite 5C Idaho Falls, ID 83402

Developers Surety and Indemnity Company Lawrence G. Kepiro 17780 Fitch, Suite 200 Irvine, CA 92614

Dear Sirs:

Enclosed please find a copy of a Notice of Lawsuit and Request for Waiver of Service of Summons and two copies of a Waiver of Service of Summons along with a self-addressed envelope for return of a signed copy of the Waiver. Please sign the waiver and return to my office in the envelope provided.

If you refuse to accept service of the same, you will be held responsible for all costs of service and time imposed.

Yours very truly,

BLASER, SORENSEN & HANSEN, Chrt.

Stephen 3. Blase Attorney at Law

SJB/prh/02-1088

cc: Holm Construction

STEPHEN J. BLASER

BLASER, SORENSEN & HANSEN, Chartered Attorneys at Law 285 N.W. Main P.O. Box 1047 Blackfoot, Idaho 83221

> (208) 785-4700 Fax No. 785-7080 ISB #1923

Attorneys for Plaintiff

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF IDAHO

HOLM CONSTRUCTION, LLC, an Idaho Limited Liability Company, in the name of THE UNITED STATES OF AMERICA,))) Case No. CV-03-273-E-LMB
Plaintiff, vs) NOTICE OF LAWSUIT AND REQUEST FOR WAIVER OF SERVICE OF SUMMONS
DESERT SAGE CONTRACTORS, Inc., an Idaho Corporation, and DEVELOPERS SURETY AND INDEMNITY COMPANY, Surety,)))
Defendants.	

TO: RANCE BARE, agent of DESERT SAGE CONTRACTORS, Inc.

A lawsuit has been commenced against you (or the entity whose behalf you are addressed). A copy of the complaint is attached to this notice. It has been filed in the United States District Court for the State of Idaho and has been assigned docket number CV-03-273-E-LMB

This is not a formal summons or notification from the court, but rather my request that you sign and return the enclosed waiver of service in order to save the cost of serving you with a judicial summons and an additional copy of the complaint. The

cost of service will be avoided if I receive a signed copy of the waiver within 30 days after the date designated below as the date on which this Notice and request is sent. I enclose a stamped and addressed envelope for your use. An extra copy of the waiver is also attached for your records.

If you comply with this request and return the signed waiver, it will be filed with the court and no summons will be served on you. The action will then proceed as if you had been served on the date the waiver is filed, except that you will not be obligated to answer the complaint before 60 days from the date designated below as the date on which this notice is sent.

If you do not return the signed waiver within the time indicated, I will take appropriate steps to effect formal service in a manner authorized by the Federal Rules of Civil Procedure and will then, to the extent authorized by those Rules, ask the court to require you (or the party on whose behalf you are addressed) to pay the full costs of such service. In that connection, please read the statement concerning the duty of parties to waive the service of the summons, which is set forth on the foot of the waiver form.

I affirm that this request is being sent to you on behalf of the plaintiff, this day of October ____, 2003.

DATED AND SIGNED this ____ day of October, 2003.

BLASER, SORENSEN & HANSEN, Chrt.

STEPHEN J. BLASER Attorneys for Plaintiff

STEPHEN J. BLASER

BLASER, SORENSEN & HANSEN, Chartered Attorneys at Law 285 N.W. Main P.O. Box 1047 Blackfoot, Idaho 83221

> (208) 785-4700 Fax No. 785-7080 ISB #1923

Attorneys for Plaintiff

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF IDAHO

HOLM CONSTRUCTION, LLC, an Idaho Limited Liability Company, in the name of THE UNITED STATES OF AMERICA,)) Case No. CV-03-273-E-LMB
Plaintiff,)) WAIVER OF SERVICE OF SUMMONS
vs) }
DESERT SAGE CONTRACTORS, Inc., an Idaho Corporation, and DEVELOPERS SURETY AND INDEMNITY COMPANY, Surety,)))
Defendants.	

To: STEPHEN J. BLASER

I acknowledge receipt of your request that I waive service of a summons in the action of HOLM CONSTRUCTION, LLC v. DESERT SAGE CONTRACTORS, Inc, an Idaho Corporation, and DEVELOPERS SURETY AND INDEMNITY COMPANY, Surety, which is case number CV-03-737-E-LMB in the United States District Court for the State of Idaho. I have also received a copy of the complaint in the action, two copies of this instrument, and a means by which I can return the signed waiver to you without cost to me.

I agree to save the cost of service of a summons and an additional copy of the complaint in this lawsuit by not requiring that I (or the entity on whose behalf I am acting) be served with judicial process in the manner provided by Rule 4.

I (or the entity on whose behalf I am acting) will retain all defenses or objections to the lawsuit or to the jurisdiction or venue of the court except for objections based on a defect in the summons or in the service of the summons.

	it a judgment may be entered against me (or the part n answer or motion under Rule 12 is not served upor
in 60 days after	•
Date	Signature
	Printed/typed name: Rance Bare as agent of Desert Sage Contractors Inc.
SUBSCRIBED AN	D SWORN to before me this day of October, :
·	Notary Public for State of Idaho Residing at, My cmn exprs:

Duty to Avoid Unnecessary Costs of Service of Summons

Rule 4 of the Federal rules of Civil Procedure requires certain parties to cooperate in saving unnecessary costs of service of the summons and complaint. A defendant located in the United States who, after being notified of an action and asked by a plaintiff located in the United States to waive service of a summons, fails to do so will be required to bear the cost of such service unless good cause be shown for its failure to sign and return the waiver.

It is not good cause for a failure to waive service that a party believes that the complaint is unfounded, or that the action has been brought in an improper place or in a court that lacks jurisdiction over the subject matter of the action or over its person or property. A party who waives service of the summons retains all defenses and objections (except any relating to the summons or to the service of the summons), and may later object to the jurisdiction of the court or to the place where the action has been brought.

A defendant who waives service must within the time specified on the waiver form serve on the plaintiff's attorney (or unrepresented plaintiff) a response to the complaint and must also file a signed copy of the response with the court. If the answer or motion is not served within this time, a default judgment may be taken against that defendant. By waiving service, a defendant is allowed more time to answer than if the summons had been actually served when the request for waiver of service was received.

STEPHEN J. BLASER

BLASER, SORENSEN & HANSEN, Chartered Attorneys at Law 285 N.W. Main P.O. Box 1047 Blackfoot, Idaho 83221

> (208) 785-4700 Fax No. 785-7080 ISB #1923

Attorneys for Plaintiff

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF IDAHO

HOLM CONSTRUCTION, LLC, an Idaho Limited Liability Company, in the name of THE UNITED STATES OF AMERICA,))) Case No. CV-03-273-E-LMB
Plaintiff,) WAIVER OF SERVICE OF SUMMONS
vs DESERT SAGE CONTRACTORS, Inc., an Idaho Corporation, and DEVELOPERS SURETY AND INDEMNITY COMPANY, Surety,))))
Defendants.	

To: STEPHEN J. BLASER

I acknowledge receipt of your request that I waive service of a summons in the action of HOLM CONSTRUCTION, LLC v. DESERT SAGE CONTRACTORS, Inc., an Idaho Corporation, and DEVELOPERS SURETY AND INDEMNITY COMPANY, Surety, which is case number CV-03-737-E-LMB in the United States District Court for the State of Idaho. I have also received a copy of the complaint in the action, two copies of this instrument, and a means by which I can return the signed waiver to you without cost to me.

I agree to save the cost of service of a summons and an additional copy of the complaint in this lawsuit by not requiring that I (or the entity on whose behalf I am acting) be served with judicial process in the manner provided by Rule 4.

I (or the entity on whose behalf I am acting) will retain all defenses or objections to the lawsuit or to the jurisdiction or venue of the court except for objections based on a defect in the summons or in the service of the summons.

	at a judgment may be entered against me (or the party on answer or motion under Rule 12 is not served upon y
nin 60 days after	·
Date	Signature
	Printed/typed name: Rance Bare as agent of Desert Sage Contractors Inc.
SUBSCRIBED AN	ID SWORN to before me this day of October, 20
	Notary Public for State of Idaho Residing at, My cmn exprs:

Duty to Avoid Unnecessary Costs of Service of Summons

Rule 4 of the Federal rules of Civil Procedure requires certain parties to cooperate in saving unnecessary costs of service of the summons and complaint. A defendant located in the United States who, after being notified of an action and asked by a plaintiff located in the United States to waive service of a summons, fails to do so will be required to bear the cost of such service unless good cause be shown for its failure to sign and return the waiver.

It is not good cause for a failure to waive service that a party believes that the complaint is unfounded, or that the action has been brought in an improper place or in a court that lacks jurisdiction over the subject matter of the action or over its person or property. A party who waives service of the summons retains all defenses and objections (except any relating to the summons or to the service of the summons), and may later object to the jurisdiction of the court or to the place where the action has been brought.

A defendant who waives service must within the time specified on the waiver form serve on the plaintiff's attorney (or unrepresented plaintiff) a response to the complaint and must also file a signed copy of the response with the court. If the answer or motion is not served within this time, a default judgment may be taken against that defendant. By waiving service, a defendant is allowed more time to answer than if the summons had been actually served when the request for waiver of service was received.

Exhibit J



July 14, 2004

Desert Sage Contractors, Inc.

445 N. Capital

Idaho Falls, ID 83402

Attention: William F. Rance Bare, Carma Bare, Irene M. Brown, Kenneth Brown,

Shane S. Stears, Kathyrn Stears, Edna Larsen and Kelly Larson

RE: Surety

: Developers Surety and Indemnity Company

Bond No.

: 849514P

Principal

: Desert Sage Contractors, Inc.

Project

: Cress Creek Trail & Parking Lot Construction

Case

: Holm Construction v. Desert Sage et al.

Case No

: USDC CIV 03-273-E-LMB

Dear Principal and Indemnitors:

On July 13, 2004 Developers Surety and Indemnity Company received a letter from Stephen Blaser stating he had obtained a judgment in favor of Holm Construction and against Desert Sage Contractors for \$36,913.70 in the above-referenced action and asking what he needed to do to "get this matter taken care of?" I have enclosed a copy of his letter and my written response.

I understood that Desert Sage was protecting the surety's interests (as well as its own) and that the parties had agreed to attempt a mediated settlement of this dispute. This purported judgment, therefore, comes as a surprise to me as, I expect, it does to you. I ask that you promptly let me know your position regarding this situation and what you plan to do about it.

Thank you for your attention and assistance.

Very truly yours,

DEVELOPERS SURETY AND INDEMNITY COMPANY

Louis J. White

Senior Counsel, Claims

Enclosure

Insco Insurance Services, Inc. • CA Lic. 0403172



July 14, 2004

Stephen Blaser Blaser, Sorensen & Hansen P.O. Box 1047 Blackfoot, IQ 83221

RE:

Surety

: Developers Surety and Indemnity Company

Bond No.

: 849514P

Principal

: Desert Sage Contractors, Inc.

Project

: Cress Creek Trail & Parking Lot Construction

Case

: Holm Construction v. Desert Sage et al.

Case No.

: USDC CIV 03-273-E-LMB

Dear Mr. Blaser:

On July 13, 2004 we received your letter dated July 5, 2004 addressed to Lawrence Kepiro informing Developers Surety and Indemnity Company that you have obtained a judgment against Desert Sage Contractors for \$36,913.70 in the above-referenced action. You did not enclose a copy of the purported judgment.

News of this judgment is a surprise to me and to counsel for Desert Sage, who believed that the parties had agreed to mediate this dispute. In order to assist my investigation please provide me with a copy of the subject judgment. I am in the process of consulting with Desert Sage and its counsel to determine an appropriate response to this development.

Thank you for your attention and assistance.

Very truly yours,

DEVELOPERS SURETY AND INDEMNITY COMPANY

Louis J. White

Senior Counsel, Claims

CC:

Desert Sage /

BLASER, SORENSEN, & HANSEN, Chartered
Attorneys at Law
(208) 1885-4700

Stephen J. Blaser Murray Jim Sorensen Scott H. Hansen Justin B. Oleson Attorneys at Law (208) 725-4700 FAX No. 785-7080 849514P

285 N.W. Main MAILING ADDRESS: P.O. Box 1047 Blackfoot, Idaho 83221

July 5, 2004

Lawrence G. Kepiro
Developers Surety and Indemnity Company
17780 Fitch, Suite 200
Irvine, CA 92614

RE: Holm Construction v. Desert Sage Contractors

Dear Lawrence:

Per the above matter, we obtained a Judgment against Desert Sage Contractors for \$36,913.70.

What can we do to get this matter paid and taken care of?

Please get back to me.

Yours very truly,

BLASER, SORENSEN & HANSEN, Chrt.

Attorney at Law

SJB/kd

CC:

Holm Construction

RECEIVED
JUL 1 3 2004
RECOVERY DEPT.

Exhibit K

lesert Sage

445 N. CAPITAL SUITE 5C IDAHO FALLS, ID 83402 PH. (208) 552-1144

BANK OF IDAHO

92-367 1241 21906

****Seven hundred forty-one dollars and 16 cents

DATE

CHECK NO.

AMOUNT.

September 26, 2003

21906 \$******741.1

PAY TO THE ORDER OF John L. Stosich P.O. Box 50652

482 Constitution Way, Suite 308

#021906# #124103676#

Idaho Falls, ID 83405

17240934

,,000000 14 1 18%

